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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

Case No. 13-cv-06161 (VEB)

SARAH MARSH,

Plaintiff,

vs.

CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,

Defendant.

DECISION AND ORDER

**I. INTRODUCTION**

In September of 2010, Plaintiff Sarah Marsh applied for Supplemental Security Income (“SSI”) benefits under the Social Security Act. The Commissioner of Social Security denied the application.

1 Plaintiff, by and through her attorneys, Leidner & Leidner, Suzanne C.  
2 Leidner, Esq. of counsel, commenced this action seeking judicial review of the  
3 Commissioner's denial of benefits pursuant to 42 U.S.C. §§ 405 (g) and 1383 (c)(3).

4 The parties consented to the jurisdiction of a United States Magistrate Judge.  
5 (Docket No. 28, 29). On December 28, 2015, this case was referred to the  
6 undersigned pursuant to General Order 05-07. (Docket No. 31).

## 7 8 **II. BACKGROUND**

9 Plaintiff applied for SSI benefits on September 8, 2010, alleging disability  
10 beginning March 15, 2005, due to depression, paranoia, bipolar disorder, and  
11 attention-deficit disorder. (T at 16, 147-53).<sup>1</sup> The application was denied initially  
12 and on reconsideration. Plaintiff requested a hearing before an Administrative Law  
13 Judge ("ALJ").

14 On February 8, 2012, a hearing was held before ALJ Sally C. Reason. (T at  
15 38). Plaintiff appeared with her attorney and testified. (T at 77-83). The ALJ also  
16 received testimony from Dr. Glenn Griffin, a medical expert (T at 43-52, 77, 83-85),  
17 John Marsh, Plaintiff's father (T at 52-63), Kathy Kartiganer, Plaintiff's mother (T  
18 at 63-76), and Frank Corso, a vocational expert (T at 85-88).

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19 <sup>1</sup> Citations to ("T") refer to the administrative record at Docket No. 14.

1 On February 15, 2012, the ALJ issued a written decision denying the  
2 application for benefits. (T at 13-31). The ALJ's decision became the  
3 Commissioner's final decision on May 20, 2013, when the Appeals Council denied  
4 Plaintiff's request for review. (T at 4-10).

5 On August 21, 2013, Plaintiff, acting by and through her counsel, filed this  
6 action seeking judicial review of a decision by the Commissioner of Social Security  
7 denying her application for Supplemental Security Income ("SSI") benefits. (Docket  
8 No. 3). The Commissioner interposed an Answer on March 6, 2014. (Docket No.  
9 13). The parties filed a Joint Stipulation on October 9, 2014. (Docket No. 25).

10 After reviewing the pleadings, Joint Stipulation, and administrative record,  
11 this Court finds that the Commissioner's decision must be affirmed and this case be  
12 dismissed.

### 13 **III. DISCUSSION**

#### 14 **A. Sequential Evaluation Process**

15 The Social Security Act ("the Act") defines disability as the "inability to  
16 engage in any substantial gainful activity by reason of any medically determinable  
17 physical or mental impairment which can be expected to result in death or which has  
18 lasted or can be expected to last for a continuous period of not less than twelve  
19 months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides that a

1 claimant shall be determined to be under a disability only if any impairments are of  
2 such severity that he or she is not only unable to do previous work but cannot,  
3 considering his or her age, education and work experiences, engage in any other  
4 substantial work which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A),  
5 1382c(a)(3)(B). Thus, the definition of disability consists of both medical and  
6 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9<sup>th</sup> Cir. 2001).

7 The Commissioner has established a five-step sequential evaluation process  
8 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920. Step  
9 one determines if the person is engaged in substantial gainful activities. If so,  
10 benefits are denied. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If not, the  
11 decision maker proceeds to step two, which determines whether the claimant has a  
12 medially severe impairment or combination of impairments. 20 C.F.R. §§  
13 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

14 If the claimant does not have a severe impairment or combination of  
15 impairments, the disability claim is denied. If the impairment is severe, the  
16 evaluation proceeds to the third step, which compares the claimant's impairment(s)  
17 with a number of listed impairments acknowledged by the Commissioner to be so  
18 severe as to preclude substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii),  
19 416.920(a)(4)(iii); 20 C.F.R. § 404 Subpt. P App. 1. If the impairment meets or  
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1 equals one of the listed impairments, the claimant is conclusively presumed to be  
2 disabled. If the impairment is not one conclusively presumed to be disabling, the  
3 evaluation proceeds to the fourth step, which determines whether the impairment  
4 prevents the claimant from performing work which was performed in the past. If the  
5 claimant is able to perform previous work, he or she is deemed not disabled. 20  
6 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At this step, the claimant's residual  
7 functional capacity (RFC) is considered. If the claimant cannot perform past relevant  
8 work, the fifth and final step in the process determines whether he or she is able to  
9 perform other work in the national economy in view of his or her residual functional  
10 capacity, age, education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),  
11 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

12 The initial burden of proof rests upon the claimant to establish a *prima facie*  
13 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9<sup>th</sup>  
14 Cir. 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9<sup>th</sup> Cir. 1999). The initial burden  
15 is met once the claimant establishes that a mental or physical impairment prevents  
16 the performance of previous work. The burden then shifts, at step five, to the  
17 Commissioner to show that (1) plaintiff can perform other substantial gainful  
18 activity and (2) a "significant number of jobs exist in the national economy" that the  
19 claimant can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9<sup>th</sup> Cir. 1984).

1 **B. Standard of Review**

2 Congress has provided a limited scope of judicial review of a Commissioner's  
3 decision. 42 U.S.C. § 405(g). A Court must uphold a Commissioner's decision,  
4 made through an ALJ, when the determination is not based on legal error and is  
5 supported by substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9<sup>th</sup> Cir.  
6 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9<sup>th</sup> Cir. 1999).

7 "The [Commissioner's] determination that a plaintiff is not disabled will be  
8 upheld if the findings of fact are supported by substantial evidence." *Delgado v.*  
9 *Heckler*, 722 F.2d 570, 572 (9<sup>th</sup> Cir. 1983)(citing 42 U.S.C. § 405(g)). Substantial  
10 evidence is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119  
11 n 10 (9<sup>th</sup> Cir. 1975), but less than a preponderance. *McAllister v. Sullivan*, 888 F.2d  
12 599, 601-02 (9<sup>th</sup> Cir. 1989). Substantial evidence "means such evidence as a  
13 reasonable mind might accept as adequate to support a conclusion." *Richardson v.*  
14 *Perales*, 402 U.S. 389, 401 (1971)(citations omitted). "[S]uch inferences and  
15 conclusions as the [Commissioner] may reasonably draw from the evidence" will  
16 also be upheld. *Mark v. Celebreeze*, 348 F.2d 289, 293 (9<sup>th</sup> Cir. 1965). On review,  
17 the Court considers the record as a whole, not just the evidence supporting the  
18 decision of the Commissioner. *Weetman v. Sullivan*, 877 F.2d 20, 22 (9<sup>th</sup> Cir.  
19 1989)(quoting *Kornock v. Harris*, 648 F.2d 525, 526 (9<sup>th</sup> Cir. 1980)).

1 It is the role of the Commissioner, not this Court, to resolve conflicts in  
2 evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one rational  
3 interpretation, the Court may not substitute its judgment for that of the  
4 Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9<sup>th</sup>  
5 Cir. 1984). Nevertheless, a decision supported by substantial evidence will still be  
6 set aside if the proper legal standards were not applied in weighing the evidence and  
7 making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d  
8 432, 433 (9<sup>th</sup> Cir. 1987). Thus, if there is substantial evidence to support the  
9 administrative findings, or if there is conflicting evidence that will support a finding  
10 of either disability or non-disability, the finding of the Commissioner is conclusive.  
11 *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9<sup>th</sup> Cir. 1987).

### 12 **C. Commissioner's Decision**

13 The ALJ determined that Plaintiff had not engaged in substantial gainful  
14 activity since September 8, 2010, the application date. (T at 18). The ALJ found that  
15 Plaintiff's obesity, bipolar disorder, and borderline personality disorder were  
16 "severe" impairments under the Act. (Tr. 18).

17 However, the ALJ concluded that Plaintiff did not have an impairment or  
18 combination of impairments that met or medically equaled one of the impairments  
19 set forth in the Listings. (T at 21).

1 The ALJ determined that Plaintiff retained the residual functional capacity  
2 (“RFC”) to perform medium work as defined in 20 CFR § 416.967 (c), provided the  
3 work did not involve more than occasional social interactions. (T at 22).

4 The ALJ noted that Plaintiff had no past relevant work. (T at 26). Considering  
5 Plaintiff’s age (23 years old on the application date), education (at least high school),  
6 work experience (no past relevant work), and residual functional capacity, the ALJ  
7 found that jobs exist in significant numbers in the national economy that Plaintiff  
8 can perform. (T at 26).

9 Accordingly, the ALJ determined that Plaintiff was not disabled within the  
10 meaning of the Social Security Act between September 8, 2010 (the application  
11 date) and February 15, 2012 (the date of the decision) and was therefore not entitled  
12 to benefits. (T at 27). As noted above, the ALJ’s decision became the  
13 Commissioner’s final decision when the Appeals Council denied Plaintiff’s request  
14 for review. (T at 4-10).

15 **D. Disputed Issues**

16 As set forth in the Joint Stipulation (Docket No. 25, at p. 11), Plaintiff offers  
17 four (4) main arguments in support of her claim that the Commissioner’s decision  
18 should be reversed. First, she challenges the ALJ’s credibility determination.  
19 Second, Plaintiff contends that the ALJ did not adequately assess her residual



1 functional capacity. Third, she argues that the ALJ did not properly consider lay  
2 witness testimony. Fourth, Plaintiff asserts that the ALJ's step five analysis was  
3 flawed. This Court will address each argument in turn.

#### 4 5 **IV. ANALYSIS**

##### 6 **A. Credibility**

7 A claimant's subjective complaints concerning his or her limitations are an  
8 important part of a disability claim. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d  
9 1190, 1195 (9<sup>th</sup> Cir. 2004)(citation omitted). The ALJ's findings with regard to the  
10 claimant's credibility must be supported by specific cogent reasons. *Rashad v.*  
11 *Sullivan*, 903 F.2d 1229, 1231 (9<sup>th</sup> Cir. 1990). Absent affirmative evidence of  
12 malingering, the ALJ's reasons for rejecting the claimant's testimony must be "clear  
13 and convincing." *Lester v. Chater*, 81 F.3d 821, 834 (9<sup>th</sup> Cir. 1995). "General  
14 findings are insufficient: rather the ALJ must identify what testimony is not credible  
15 and what evidence undermines the claimant's complaints." *Lester*, 81 F.3d at 834;  
16 *Dodrill v. Shalala*, 12 F.3d 915, 918 (9<sup>th</sup> Cir. 1993).

17 However, subjective symptomatology by itself cannot be the basis for a  
18 finding of disability. A claimant must present medical evidence or findings that the  
19 existence of an underlying condition could reasonably be expected to produce the

1 symptomatology alleged. See 42 U.S.C. §§423(d)(5)(A), 1382c (a)(3)(A); 20 C.F.R.  
2 § 404.1529(b), 416.929; SSR 96-7p.

3 In this case, Plaintiff testified as follows: She is 24 years old. She did not  
4 complete high school, but obtained a California high school proficiency certificate.  
5 She has never worked full-time and believes she is unable to do so. (T at 77). The  
6 stress demands of regular work activity would cause crippling anxiety and mood  
7 swings. (T at 78). She relies on the financial support of her parents. (T at 79). A  
8 work attempt failed because racing thoughts and anxiety prevented Plaintiff from  
9 consistently performing her duties. (T at 80). Stress and anxiety bring on need for  
10 lengthy naps. (T at 80). Medication has caused weight gain, but has not addressed  
11 her anxiety or fatigue. (T at 81). Her mood shifts between fatigue and irritability to  
12 depression. (T at 81). She has attempted to complete college courses, but was not  
13 successful because of depression, social anxiety, and difficulties with focus. (T at  
14 82).

15 The ALJ concluded that Plaintiff's medically determinable impairments could  
16 reasonably be expected to cause the alleged symptoms, but that her statements  
17 regarding the intensity, persistence, and limiting effects of the symptoms were not  
18 fully credible. (T at 23). In sum, the ALJ found that Plaintiff's mental and/or  
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1 emotional issues precluded her from some work settings, but did not render her  
2 wholly incapable of sustaining any and all work activity. (T at 23).

3 For the reasons that follow, this Court finds the ALJ's decision consistent with  
4 applicable law and supported by substantial evidence. The ALJ noted that no  
5 treating or examining medical source assessed Plaintiff with mental functioning  
6 limitations of the degree she alleged. (T at 24). In addition, three medical experts  
7 opined that Plaintiff could perform basic work activities, with some limitations.

8 Dr. Lou Ellen Sherrill, a clinical psychologist, performed a consultative  
9 examination in January of 2011. Dr. Sherrill opined that Plaintiff could perform  
10 simple and repetitive tasks with minimal supervision and maintain appropriate  
11 persistence and pace over a normal work cycle. (T at 253). Dr. Sherrill concluded  
12 that Plaintiff could understand, remember, and carry out at least simple to  
13 moderately complex verbal instructions without difficulty, and would have only  
14 mild difficulty tolerating ordinary work pressures and interacting satisfactorily with  
15 others in the workplace. (T at 253). She found that Plaintiff would have mild to  
16 moderate difficulty observing basic work and safety standards, but could handle her  
17 financial affairs independently. (T at 253).

18 Dr. Glenn Griffin, a medical expert, reviewed the record and concluded that  
19 Plaintiff had mild restriction in areas of daily living, moderate difficulty with regard  
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1 to social functioning, and mild difficulty with regard to concentration, persistence,  
2 and pace. (T at 45). He opined that Plaintiff could interact with peers, co-workers,  
3 supervisors, and the general public on an occasional basis. (T at 45). He further  
4 found that Plaintiff retained the ability to work and persist for 8 hours a day, five  
5 days a week. (T at 45-46).

6 Dr. R.E. Brooks, a State Agency review consultant, concluded that Plaintiff's  
7 impairments did not result in any significant mental limitations. (T at 264).

8 The ALJ also summarized the treatment history, which generally showed  
9 improved function, stable symptoms, and a lack of serious abnormalities of  
10 behavior. (T at 19-20, 23-24). Mental status examinations in 2009, 2010, and 2011  
11 generally showed no deficits and improved symptom complaints with medication. (T  
12 at 24).

13 Although lack of supporting medical evidence cannot form the sole basis for  
14 discounting pain testimony, it is a factor the ALJ may consider when analyzing  
15 credibility. *Burch v. Barnhart*, 400 F.3d 676, 680 (9<sup>th</sup> Cir. 2005). In other words, an  
16 ALJ may properly discount subjective complaints where, as here, they are  
17 contradicted by medical records. *Carmickle v. Comm'r of Soc. Sec. Admin.*, 533 F.3d  
18 1155, 1161 (9<sup>th</sup> Cir. 2008); *Thomas v. Barnhart*, 278 F.3d 947, 958-59 (9<sup>th</sup> Cir.  
19 2002).

1       The ALJ also noted that Plaintiff made inconsistent statements, which  
2 detracted from her credibility. Although Plaintiff claimed to be unable to perform  
3 activities of daily living, the record indicated that she could attend medical  
4 appointments, complete a high school equivalency course, perform household  
5 chores, attend to the computer for several hours at a time, and engage in extended  
6 out of state travel. (T at 23-25).

7       When assessing a claimant's credibility, the ALJ may employ "ordinary  
8 techniques of credibility evaluation." *Turner v. Comm'r of Soc. Sec.*, 613 F.3d 1217,  
9 1224 n.3 (9<sup>th</sup> Cir. 2010)(quoting *Smolen v. Chater*, 80 F.3d 1273, 1284 (9<sup>th</sup> Cir.  
10 1996)). Activities of daily living are a relevant consideration in assessing a  
11 claimant's credibility. See *Rollins v. Massanari*, 261 F.3d 853, 857 (9<sup>th</sup> Cir. 2001).  
12 Although the claimant does not need to "vegetate in a dark room" to be considered  
13 disabled, *Cooper v. Brown*, 815 F.2d 557, 561 (9<sup>th</sup> Cir. 1987), the ALJ may discount  
14 a claimant's testimony to the extent his or her activities of daily living "contradict  
15 claims of a totally debilitating impairment." *Molina v. Astrue*, 674 F.3d 1104, 1112-  
16 13 (9<sup>th</sup> Cir. 2011).

17       Lastly, Plaintiff contends that the ALJ erred by focusing on the evidence  
18 pertaining to the period following the application date (September 8, 2010).  
19 However, the ALJ did discuss Plaintiff's medical history prior to that date  
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1 extensively. (T at 18, 23). Moreover, the ALJ did not err in focusing the inquiry on  
2 whether Plaintiff was disabled after the application date, as the Social Security Act  
3 permits payments of SSI benefits only for the period following the application for  
4 benefits. 42 U.S.C. § 1382 (c)(7), 20 CFR § 416.335. Plaintiff has also not shown  
5 how some arguable, additional consideration of the evidence from prior to the  
6 relevant time period would have changed the outcome or, how such consideration  
7 undermines the ALJ's decision.

8 For the reasons outlined above, this Court finds no reversible error with regard  
9 to the ALJ's credibility determination.

#### 10 **B. RFC**

11 In disability proceedings, a treating physician's opinion carries more weight  
12 than an examining physician's opinion, and an examining physician's opinion is  
13 given more weight than that of a non-examining physician. *Benecke v. Barnhart*,  
14 379 F.3d 587, 592 (9th Cir. 2004); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.  
15 1995). If the treating or examining physician's opinions are not contradicted, they  
16 can be rejected only with clear and convincing reasons. *Lester*, 81 F.3d at 830. If  
17 contradicted, the opinion can only be rejected for "specific" and "legitimate" reasons  
18 that are supported by substantial evidence in the record. *Andrews v. Shalala*, 53 F.3d  
19 1035, 1043 (9th Cir. 1995). Historically, the courts have recognized conflicting

1 medical evidence, and/or the absence of regular medical treatment during the alleged  
2 period of disability, and/or the lack of medical support for doctors' reports based  
3 substantially on a claimant's subjective complaints of pain, as specific, legitimate  
4 reasons for disregarding a treating or examining physician's opinion. *Flaten v.*  
5 *Secretary of Health and Human Servs.*, 44 F.3d 1453, 1463-64 (9th Cir. 1995).

6 An ALJ satisfies the "substantial evidence" requirement by "setting out a  
7 detailed and thorough summary of the facts and conflicting clinical evidence, stating  
8 his interpretation thereof, and making findings." *Garrison v. Colvin*, 759 F.3d 995,  
9 1012 (9<sup>th</sup> Cir. 2014)(quoting *Reddick v. Chater*, 157 F.3d 715, 725 (9<sup>th</sup> Cir. 1998)).

10 Here, Plaintiff challenges the ALJ's RFC determination and consideration of  
11 the medical evidence. In particular, Plaintiff contends that the ALJ disregarded an  
12 April 2012 letter from Dr. Erica Kass, a treating psychiatrist. Dr. Kass reported that  
13 Plaintiff had "significant difficulty" with her activities of daily living and (despite  
14 being "extremely motivated") struggled with basic tasks and relied heavily on her  
15 family. (T at 611). According to Dr. Kass, Plaintiff has difficulty concentrating for  
16 extended periods, is depressed and hopeless, and is easily overwhelmed and anxious.  
17 (T at 611).

1 Although Plaintiff claims the ALJ ignored Dr. Kass's letter, the letter actually  
2 post-dates the ALJ's decision, which was issued on February 15, 2012. (T at 27).  
3 The letter was presented to and considered by the Appeals Council. (T at 8).

4 The Appeals Council is required consider "new and material" evidence if it  
5 "relates to the period on or before the date of the [ALJ's] hearing decision." 20  
6 C.F.R. § 404.970(b); see also §416.1470(b). The Appeals Council "will then review  
7 the case if it finds that the [ALJ]'s action, findings, or conclusion is contrary to the  
8 weight of the evidence currently of record." 20 C.F.R. § 404.970(b); see §  
9 416.1470(b).

10 Here, the Appeals Council concluded that Dr. Kass's letter did not provide a  
11 basis for changing the ALJ's decision. (T at 5). This Court finds no error with  
12 regard to this finding. Dr. Kass's report is conclusory and contains no supporting  
13 clinical findings or detailed explanation regarding the basis of the doctor's opinions.  
14 The ALJ is not obliged to accept a treating source opinion that is "brief, conclusory  
15 and inadequately supported by clinical findings." *Lingenfelter v. Astrue*, 504 F.3d  
16 1028, 1044-45 (9th Cir. 2007) (citing *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th  
17 Cir. 2002)). Dr. Kass appears to have based her conclusions primarily upon  
18 Plaintiff's subjective complaints. Further, Dr. Kass's opinion was contradicted by  
19 the assessments of Dr. Sherrill (a consultative examiner), Dr. Griffin (a medical



1 expert who testified at the hearing), and Dr. Brooks (a State Agency review  
2 consultant), by Plaintiff's activities of daily living, and by the overall treatment  
3 history, as outlined above. (T at 23-25). The lack of medical support for a  
4 physician's opinion based substantially on a claimant's subjective complaints of pain  
5 is a legitimate reason for disregarding a treating physician's opinion. *Flaten v.*  
6 *Secretary of Health and Human Servs.*, 44 F.3d 1453, 1463-64 (9th Cir. 1995).  
7 Moreover, it is reasonable for an ALJ to discount a physician's opinion predicated  
8 on subjective complaints found to be less than credible. *Bray v. Comm'r of Soc. Sec.*,  
9 554 F.3d 1219, 1228 (9<sup>th</sup> Cir. 2009).

10 Thus, this Court finds that the ALJ's RFC determination is supported by  
11 substantial evidence and should be sustained. Likewise, this Court finds no error in  
12 the Appeals Council's conclusion that Dr. Kass's letter did not provide a basis for  
13 reversing the ALJ's decision.

#### 14 **C. Lay Evidence**

15 "Testimony by a lay witness provides an important source of information  
16 about a claimant's impairments, and an ALJ can reject it only by giving specific  
17 reasons germane to each witness." *Regennitter v. Comm'r*, 166 F.3d 1294, 1298 (9<sup>th</sup>  
18 Cir. 1999).

1 In this case, Plaintiff's father, John Marsh, testified at the administrative  
2 hearing. Mr. Marsh was 65 years old at the time of the hearing and holds a master's  
3 degree in dramatic arts. (T at 53). He sees Plaintiff about 10 days each month. (T at  
4 53). According to Mr. Marsh, Plaintiff finds social interaction taxing, even with her  
5 father, so their visits are usually brief. (T at 54-55). Attempts to arrange for  
6 volunteer work were not successful because Plaintiff "didn't follow through with it"  
7 or was only able to attend for a few hours at a time. (T at 55, 62). Although Plaintiff  
8 "brightens" and does well during a visit with her father, she is fatigued the following  
9 day and generally unavailable for activities. (T at 59). She has difficulty with follow  
10 through and needs significant support from her live-in boyfriend. (T at 60-61). In  
11 Mr. Marsh's opinion, Plaintiff's energy cycles and anxiety would prevent her from  
12 maintaining employment. (T at 61).

13 Kathy Kartiganer, Plaintiff's mother, also testified. Ms. Kartiganer was 56 at  
14 the time of the hearing and has a master's degree in social work. (T at 63). She has  
15 provided support to Plaintiff, who has also been assisted by a counselor at "Daniel's  
16 Place," an organization for young people struggling with mental illness. (T at 64).  
17 Ms. Kartiganer explained that Plaintiff's application for SSI benefits was motivated  
18 by her difficulties handling even volunteer work and attending community college  
19 classes. (T at 64). She was only able to attend at volunteer work for about four  
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1 hours at a time. (T at 67). Social interaction and pressure cause fatigue and are  
2 physically and mentally overwhelming. (T at 68). Ms. Kartiganer lived with  
3 Plaintiff for the first 23 years of Plaintiff's life. (T at 69). Plaintiff moved out and  
4 now lives with her boyfriend, who is very supportive. (T at 69). The inability to  
5 complete a college course in the Spring of 2011 sent Plaintiff into a depressive  
6 period. (T at 70-71). Her day-to-day life is "usually fraught with overwhelm [*sic*]  
7 and fatigue and then regrouping." (T at 73). When she lived with her parents,  
8 Plaintiff had difficulty maintaining household chores. (T at 75).

9       The ALJ discussed the testimony provided by Plaintiff's parents, but did not  
10 specifically state how much weight she assigned to their opinions. (T at 23).  
11 Although this was error, the Ninth Circuit has held that an ALJ's failure to address  
12 lay testimony may be harmless where, as here, the ALJ validly rejected the  
13 subjective complaints of the claimant, which were substantially the same as the lay  
14 testimony. *See Valentine v. Astrue*, 574 F.3d 685, 694 (9<sup>th</sup> Cir. 2009); *Molina v.*  
15 *Astrue*, 674 F.3d 1104, 1114 (9<sup>th</sup> Cir. 2012). Moreover, in this particular case, Dr.  
16 Griffin, the medical expert, was asked whether the testimony from Plaintiff's parents  
17 changed his opinion that Plaintiff retained the ability to work and persist for 8 hours  
18 a day, five days a week. (T at 45-46). He testified that it did not change his opinion.  
19 (T at 77).

1           Accordingly, this Court finds no reversible error as to this aspect of the ALJ's  
2           decision. In sum, the ALJ validly discounted Plaintiff's subjective complaints (as  
3           inconsistent with the treatment history, medical opinions, and Plaintiff's activities of  
4           daily living) and the same reasons would constitute "germane" reasons for  
5           discounting the lay opinion testimony offered by Plaintiff's parents. *See Stout v.*  
6           *Comm'r, Soc. Sec. Admin.*, 454 F.3d 1050, 1054-55 (9th Cir. 2006) (describing the  
7           harmless error test as whether "the ALJ's error did not materially impact his  
8           decision"); *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 885 (9th Cir.2006) (holding  
9           that an error is harmless if it was "inconsequential to the ultimate nondisability  
10          determination").

#### 11       **D.     Step Five Analysis**

12          At step five of the sequential evaluation, the burden is on the Commissioner to  
13          show that (1) the claimant can perform other substantial gainful activity and (2) a  
14          "significant number of jobs exist in the national economy" which the claimant can  
15          perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984). If a claimant cannot  
16          return to his previous job, the Commissioner must identify specific jobs existing in  
17          substantial numbers in the national economy that the claimant can perform. See  
18          *Johnson v. Shalala*, 60 F.3d 1428, 1432 (9th Cir.1995). The Commissioner may  
19          carry this burden by "eliciting the testimony of a vocational expert in response to a

1 hypothetical that sets out all the limitations and restrictions of the claimant.”  
2 *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir.1995). The ALJ's depiction of the  
3 claimant's disability must be accurate, detailed, and supported by the medical record.  
4 *Gamer v. Secretary of Health and Human Servs.*, 815 F.2d 1275, 1279 (9th  
5 Cir.1987). “If the assumptions in the hypothetical are not supported by the record,  
6 the opinion of the vocational expert that claimant has a residual working capacity  
7 has no evidentiary value.” *Gallant v. Heckler*, 753 F.2d 1450, 1456 (9<sup>th</sup> Cir. 1984).

8 Here, at step five of the sequential evaluation, the ALJ relied on the testimony  
9 of a vocational expert and found that there were jobs that exist in significant  
10 numbers in the national economy that Plaintiff can perform. (T at 26). Plaintiff  
11 contends that the hypothetical questions presented to the vocational expert did not  
12 incorporate all of her limitations.

13 However, an ALJ is not obliged to accept as true limitations alleged by  
14 Plaintiff and may decline to include such limitations in the vocational expert's  
15 hypothetical if they are not supported by sufficient evidence. *See Martinez v.*  
16 *Heckler*, 807 F.2d 771 (9th Cir. 1986); *see also Bayliss v. Barnhart*, 427 F.3d 1211,  
17 1217 (9th Cir. 2005). Here, Plaintiff's argument that the ALJ's hypothetical  
18 questions were flawed is essentially a restated challenge to the ALJ's RFC  
19 determination, which challenge fails for the reasons outlined above – namely, that

1 the ALJ's decision was supported by substantial evidence, including the medical  
2 record and opinions by a consultative examiner, medical expert, and State Agency  
3 review consultant. Accordingly, this Court finds no error with respect to the ALJ's  
4 step five analysis. *See Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1175-76 (9<sup>th</sup> Cir.  
5 2008).

## 6 **V. CONCLUSION**

7 After carefully reviewing the administrative record, this Court finds  
8 substantial evidence supports the Commissioner's decision, including the objective  
9 medical evidence and supported medical opinions. It is clear that the ALJ thoroughly  
10 examined the record, afforded appropriate weight to the medical evidence, including  
11 the assessments of the treating and examining medical providers and medical  
12 experts, and afforded the subjective claims of symptoms and limitations an  
13 appropriate weight when rendering a decision that Plaintiff is not disabled. This  
14 Court finds no reversible error and because substantial evidence supports the  
15 Commissioner's decision, the Commissioner is GRANTED summary judgment and  
16 that Plaintiff's motion for judgment summary judgment is DENIED.

**VI. ORDERS**

IT IS THEREFORE ORDERED that:

Judgment be entered AFFIRMING the Commissioner's decision and DISMISSING this action, and it is further ORDERED that

The Clerk of the Court file this Decision and Order and serve copies upon counsel for the parties.

DATED, this 19th day of January, 2016.

/s/Victor E. Bianchini

VICTOR E. BIANCHINI

UNITED STATES MAGISTRATE JUDGE